dependent occurred after the particular estate ended, the interest could now take effect as an executory devise; but the courts still blindly held to the rule, that if the contingency might possibly occur before or at the termination of the preceding estate, the interest must be held a contingent remainder, and so destructible. Every future interest which has been held a contingent remainder will, however, be found to have been limited upon a contingency which might have occurred either before or after the termination of the particular estate. The logical result of *In re* Lechmere and Lloyd, and the later decisions,[1] holding such an interest not a contingent remainder, is, therefore, that the rule has been abrogated, and there exist to-day practically no contingent remainders, *i. e.*, contingent future interests which must take effect by way of succession.

Mr. Jenks, on the other hand, maintains that the rule discussed above faithfully carries out the testator's intention, and is still law. It is erroneous, says he, to suppose the rule "to imply that the same limitation might conceivably be construed both as a remainder and as an executory interest." Unquestionably the same limitation cannot take effect both as a contingent remainder and as an executory devise. This is, however, no objection to holding that the limitation shall take effect as a contingent remainder if the contingency occurs before the particular estate ends; and as an executory devise if the contingency occurs afterwards. Mr. Jenks contends that the essence of a contingent remainder is that "it was clearly intended to take effect on, and only on, the expiry of the particular estate — in other words, by way of succession." But if the reason why a contingent future interest capable of taking effect as a remainder, shall be construed as a contingent remainder, is because the testator intends it to be a remainder, then the rule is reduced to the empty formula, that the interest shall be construed to be what the testator intended it to be. What does Mr. Jenks mean by the intention that the interest shall take effect "by way of succession," *i. e.* as a remainder? If he means that the testator intends that the beneficiary shall not take if the contingency occurs after the particular estate ends, it is submitted that in fact no such expressed intention can be found in the cases in which the rule has been enforced. Mr. Jenks seems, however, to ascribe to the testator a more artificial intention. The testator is made to conceive of an estate in the abstract, apart from the beneficiaries designated by him, and to intend that it shall take effect, if at all, only at the instant when the particular estate ends. It seems more accurate in fact to say that he intends that after the expiration of the particular estate the beneficiaries described shall take a certain *quantum* of interest if a named contingency happens. If the contingency may obviously occur either before or after the preceding estate ends, and if the law permits the interest to take effect in the former event as a contingent remainder, and in the latter as an executory devise, then, unless such a desire is clearly expressed, it is a fiction to say that he intends the interest to take effect in the former alternative only.

WRITTEN AND UNWRITTEN CONSTITUTIONS IN THE UNITED STATES. — In deciding, in the case of Dorr *v.* United States (195 U. S. 138), that the right of trial by jury does not extend to the Philippine Islands, the Supreme Court of the United States has opened an entirely unsuspected field in American constitutional law, which Judge Emlin McClain has apparently been the first to explore. His able and suggestive essay furnishes the basis for a new chapter in the text-books on the subject. *Written and Unwritten Constitutions in the United States*, by Emlin McClain. 6 Columbia L. Rev. 69 (Feb., 1906).

The case of Dorr *v.* United States reaffirms and applies to the solution of the facts presented therein the principle decided in the Insular Cases, that the provisions of the Fifth and Sixth Amendments to the Federal Constitution guaranteeing common law procedure, including the right of indictment and trial by

[1] Miles *v.* Jarvis, 24 Ch. D. 633 (1883); Dean *v.* Dean, [1891] 3 Ch. 150; Blackman *v.* Fysh, [1892] 3 Ch. 209; Battie-Wrightson *v.* Thomas, [1904] 2 Ch 95.

jury, do not extend to the inhabitants of our insular possessions. It would seem that this applies equally to all the territories of the United States. By section 3 of Article IV of the Constitution, Congress is given the power "to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States." Therefore, it is suggested, there can be no distinction between the organized and the unorganized territories. The privileges guaranteed by the Bill of Rights in fact extend to the former only by virtue of an Act of Congress or a treaty provision. The conclusions of the Supreme Court, moreover, with reference to the Fifth and Sixth Amendments, seem equally applicable to the provisions of the other amendments. The court, indeed, quotes with approval from an earlier decision to the effect that the right of indictment and jury trial are not fundamental in their nature. See *Hawaii* v. *Mankichi*, 190 U. S. 197. Yet if the court is to determine what provisions are and what are not fundamental, it must do so not in accordance with any provisions contained in the Constitution itself, which makes no such distinction, but in accordance with some general principles of constitutional law not found in the written instrument, and therefore in the nature of an unwritten and evolved constitution. In legislating for the states, Congress is limited only by the terms of the written Constitution; in legislating for the territories its limitations are unwritten. Whence comes this evolved constitution? Its provisions, it is argued, are deduced by analogy from the provisions of our written Constitution, so far as they are applicable to the situation, and also, it may be, from the general principles of the unwritten constitution of Great Britain. But these restrictions, Judge McClain thinks, should not be applied by the courts, since their power to declare the acts of a co-ordinate branch of the government invalid extends only to such acts as contravene the provisions of the written Constitution. They must depend for their enforcement upon the same influences which have enforced the unwritten constitution of Great Britain. This result seems the wiser, also, because the application of these principles will involve broad questions of public policy pertaining rather to statesmanship than to legal theory, and therefore more germane to the executive and legislative branches than to the judicial department. Judge McClain concludes that whatever may be our opinions as to the responsibility of these branches of our government, it would seem unwise to recognize the paramount supremacy of the courts in enforcing such a constitution. This result, which follows as the corollary of the Dorr case, will give to the government of our newly acquired possessions the elasticity which is necessary in dealing with the novel conditions, and will also save our written Constitution the wrench which would be inevitable in fitting its provisions to a condition for which it was never intended.[1]

PERSONAL NAMES. — The legal problem with regard to names arises usually in two classes of cases: in pleading, where there has been a misnomer in some process; and where a written instrument, such as negotiable paper or a deed, has been signed with a fictitious name. In these cases, if the party sued has used the name, the question is merely one of identifying him as the user and then applying doctrines of estoppel. See 2 BOUVIER, L. DICT., RAWLE'S REV., 463. A more fundamental question, involving the nature of a name and the right to its use, is presented when a man wishes to change his name permanently. This topic forms the basis of a late article in the Yale Law Journal, *Personal Names*, by G. S. Arnold, 15 Yale L. J. 227 (March, 1906). By a treatment somewhat historical, supplemented by a collection of authorities, the author shows that originally a name was only a convenient method of distinguishing individuals from one another, and, being selected arbitrarily by the bearer, could be abandoned at his caprice. This early common law doctrine persists to-day;

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[1] As to whether there is an unwritten constitution which applies to the states as well, see *Unwritten Constitutions in the United States*, by Emlin McClain, 15 HARV. L. REV. 531. As to what constitutional rights are fundamental and what are not, see *The Legal Status of the Philippines*, by Lebbeus R. Wilfley, 14 Yale L. J. 266.